

BUREAU OF FINANCIAL INSTITUTIONS
Department of Professional and Financial Regulation
State of Maine

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Bank Secrecy Act and related Acts
Nondepository Trust Companies

EXAMINATION PROGRAM

The USA Patriot Act of 2001¹ ("Patriot Act") was enacted into federal law to strengthen the Bank Secrecy Act ("BSA") in an effort to combat terrorism in the aftermath of the terrorist attacks on the World Trade Center in New York City and the Pentagon in Washington, D.C. on September 11, 2001. For the past several years, the federal regulators, with extensive BSA examination programs, have been examining banks and thrifts for BSA compliance. However, nondepository trust companies do not have a functional federal regulator. Therefore, the Bureau will review and assess BSA compliance during its regular examinations of nondepository trust companies commencing July 1, 2003.

SUMMARY OF BSA REQUIREMENTS

The United States Department of Treasury rules implementing BSA are codified at Title 31 C.F.R. Part 103, entitled "Financial Recordkeeping and Reporting of Currency and Foreign Transactions." Part 103.11(c)(1) defines bank as a commercial bank or trust company organized under the laws of any state or of the United States. Therefore, unless specifically exempted or deferred, the BSA regulations apply to nondepository trust companies. Nondepository trust companies are encouraged to consult with legal counsel or others with knowledge and expertise in the field in developing a program for BSA compliance.

The following is an abbreviated description of the more significant requirements of the regulation:

Currency Transaction Reporting – Title 31 CFR Section 103.22

Title 31 CFR Section 103.22 requires nondepository trust companies to report transactions involving currency of \$10,000 or more, subject to certain exceptions. It is acknowledged that transactions involving trust and other fiduciary accounts rarely involve currency, but if such occurs and the amount is \$10,000 or more,

¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107-56.

then the nondepository trust company must file a Currency Transaction Report with the Internal Revenue Service within 15 days of the transaction.

Suspicious Activity Reporting – Title 31 CFR Section 103.18

Title 31 CFR Section 103.18 requires a nondepository trust company to file a Suspicious Activity Report (“SAR”) with the Financial Crimes Enforcement Network (“FINCEN”) for transactions involving \$5,000 or more in funds and assets if the institution knows, suspects, or has reason to suspect that:

- (i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- (ii) The transaction is designed to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at [12 U.S.C. 1829b](#), [12 U.S.C. 1951--1959](#), and [31 U.S.C. 5311--5330](#); or
- (iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

For nondepository trust companies, the reporting of suspicious transactions is likely to be a more frequent event than reporting currency transactions.

Special Information Sharing Procedures – Title 31 CFR Part 103, Sub-part H

This is a new provision mandated by the Patriot Act. This provision puts in place an expanded ability for financial institutions to share information with federal law enforcement agencies and with each other. Nondepository trust companies should become familiar with this sub-part so that appropriate procedures are followed when sharing information under these provisions of BSA.

Institutions should be aware that their responsibilities to share information with law enforcement (Section 314(a) of the Patriot Act) are separate and distinct from the rules and regulations of the Office of Foreign Assets Control (OFAC). In addition to BSA, institutions should establish policies and procedures for compliance with OFAC rules and regulations. Information regarding OFAC requirements can be found at <http://www.ustreas.gov/offices/enforcement/ofac/>.

Anti-Money Laundering Programs – Title 31 Part 103, Sub-part I

This is another new provision mandated by the Patriot Act. By virtue of an amendment to the rule published on November 6, 2002 in the Federal Register, however, the requirement for an Anti-Money Laundering Program has been temporarily deferred for nondepository trust companies. Although the requirements are not currently known, it is likely that an acceptable program will require a written policy approved by the institution's board of directors, a system of internal controls, periodic independent testing, designation of an officer or officers responsible for the program, and a training program for employees.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts – Title 31 CFR Part 103, Sub-part I

The Department of Treasury issued an interim final rule implementing this provision (Section 312) of the Patriot Act. These provisions are, however, temporarily deferred for nondepository trust companies until the rule is finalized. In the context of the rule, correspondent and private banking accounts refer to accounts involving foreign persons. It is not likely that nondepository trust companies will have correspondent accounts as contemplated by the statute and the rule, but nondepository trust companies may have private banking accounts. Private banking accounts are defined in the statute² as an account, or any combination of accounts, that requires minimum aggregate deposits of \$1 million or more that is established for one or more individuals, and that is assigned to or administered or managed by, in whole, or in part, an officer, employee, or agent of a financial institution acting as liaison between the financial institution and the direct or beneficial owner of the account.

The statute (Title 31 U.S.C. Section 5318(i)(3)(A)) requires financial institutions, as is needed to guard against money laundering, to take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the account.

Customer Identification Programs for Banks, Savings Associations, Credit Unions, and Certain Non-federally Insured Banks – Title 31 CFR Section 103.121

The Department of Treasury issued a final rule on May 9, 2003 implementing Section 326 of the Patriot Act. This rule (Section 103.21 of BSA) is applicable to nondepository trust companies.

The rule requires financial institutions to implement a written Customer Identification Program appropriate for its size and type of business. The rule also requires financial institutions to: obtain certain information from its customers prior to the opening of an account, keep certain records, compare information

² Section 312 of the USA Patriot Act

with certain government lists, and provide customers with notice that the institution is requesting information to verify their identities. Of particular importance to nondepository trust companies is the definition of "customer" under the rule. Customer is defined as a person that opens a new account. In the case of a trust account, the customer would be the trust. For the purposes of the rule, an institution will not be required to look through trust, escrow, or similar accounts to verify the identity of beneficiaries and will only be required to verify the identity of the named accountholder.

Financial institutions must fully implement its Customer Identification Program by October 1, 2003.

All nondepository trust companies are strongly encouraged to review BSA and related statutes and rules, and only then develop an anti-money laundering program in accordance with applicable statutes and rules that is appropriate for their institution.

A handwritten signature in black ink, reading "Howard R. Gray, Jr." in a cursive style.

Howard R. Gray, Jr.
Superintendent

Note: This Bulletin is intended for informational purposes. It is not intended to set forth legal rights, duties, or privileges nor is it intended to provide legal advice. Readers are encouraged to consult applicable statutes and regulations and to contact the Bureau of Financial Institutions if additional information is needed.